

COVID-19 AND WORKERS' COMPENSATION

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POLICY RESPONSE OVERVIEW



POLICY RESPONSE OVERVIEW: CHALLENGES

- Jobs that are not typically hazardous have become dangerous
- Community spread illnesses are not typically compensable because it's difficult to trace the origin
- Proposed policies to address Covid-19 coverage have been highly contested

POLICY RESPONSE OVERVIEW: VARYING APPROACHES

17 states and Puerto Rico have passed some form of legislation addressing workers' comp coverage in the following areas

- Presumption of coverage for Covid-19
- Benefits to healthcare workers
- Defining essential workers and their benefits
- PTSD coverage

Source: National Conference of State Legislatures

POLICY RESPONSE OVERVIEW: KANSAS

HB 2007 (failed)

- Presumption of coverage for all workers in close proximity with the public or coworkers

HB 2018 (failed)

- Presumption of coverage for all workers in close proximity with the public or coworkers

SB 1 (failed)

- Presumption of coverage for all workers in close proximity with the public or coworkers

HB 2393 (introduced, not passed in previous session)

- Extending coverage to first responders with PTSD

DIVISION RESPONSE



DIVISION RESPONSE: TIMELINE



DIVISION RESPONSE: EFFECT ON HEARINGS

	FY 2019	FY 2020	FY 2021
Total Hearings Held	6017	8196	7125
Percent of Scheduled Hearings Held	51%	58%	53%
Percent of Hearings Held Remotely	2%	29%	43%

LIFE CYCLE OF A CLAIM



ELECTRONIC DATA INTERCHANGE (EDI)

Statutory: 44-557 employer's duty to report accidents

"Within 28 days after the receipt of such (employer) knowledge, if the personal injuries...are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained."

Employers report accidents as First Reports of Injuries (FROIs) to their insurers who then report it to KDOL in an electronic format known as EDI

If there are benefits paid to a claimant, they are also reported via EDI as Subsequent Reports of Injuries (SROIs)

CLAIM PATHS

Denied - a claim may be denied by an insurer if they deem it not compensable

Benefits Paid – a claim may be paid out immediately by an insurer

Settlement – a claim may lead a settlement where parties agree upon benefits

Case – a claim may lead to a docketed case where the claim is disputed

CASE PATHS

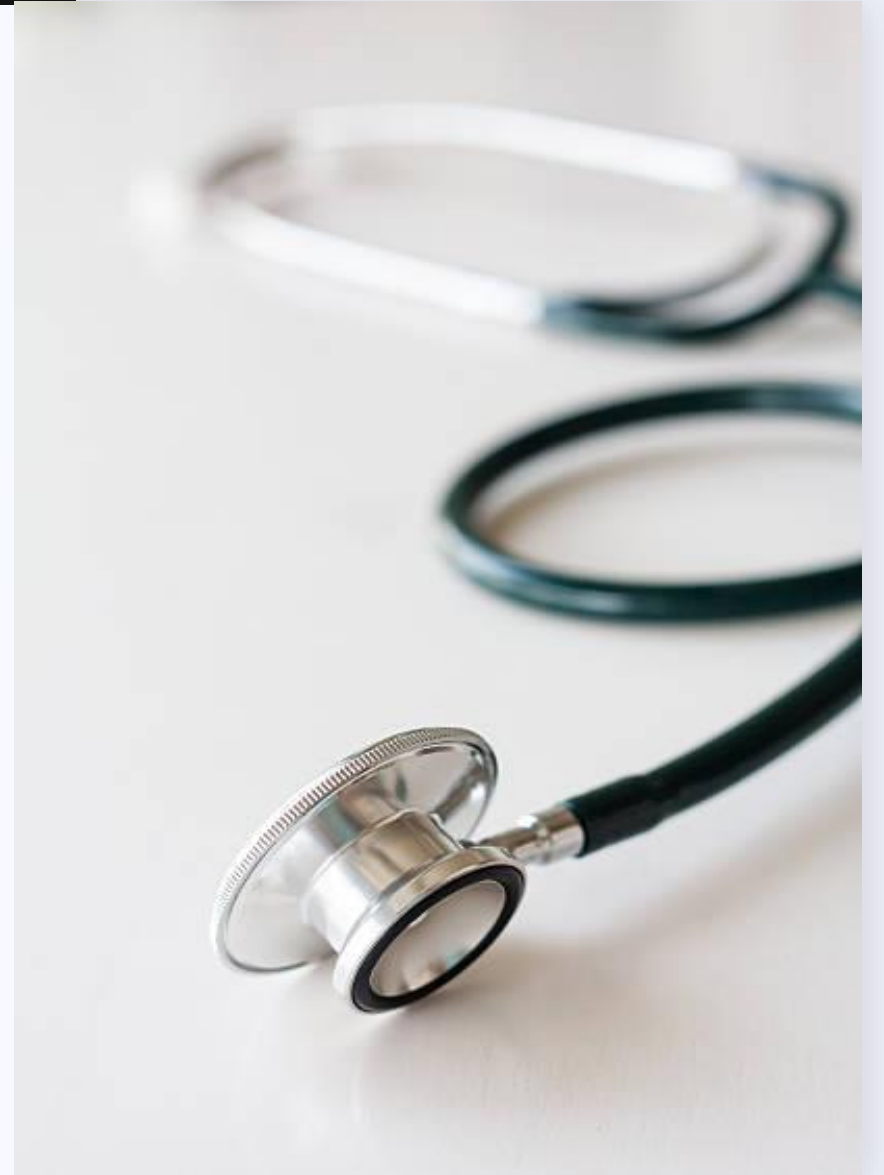
A case can be initiated on a claim when a party files an Application for Benefits (E1). It is then assigned to an ALJ.

Parties may then request hearings and vote on details for scheduling. At any point, these parties may decide to settle and stop moving forward with the Case.

The primary three hearings that must take place in a case are a Preliminary Hearing, a Pre-Hearing Settlement Conference, and a Regular Hearing

If a claimant is unhappy with a decision made on their case, they have the option to appeal that decision to the Appeals board

COVID-19 CLAIMS GUIDE



COVID-19 CLAIMS GUIDE: LEGAL FRAMEWORK

Difficult to frame as an Accident because K.S.A. 44-508(d) defines an Accident to mean:

“an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.”

Possible to frame as an Occupational Disease

- Covers diseases which have an origin in or are exacerbated by employment
- The hazard in the workplace must exceed hazards of the disease in general
- Ordinary diseases of life such as the flu are not considered occupational diseases
- Covid-19 has become an ordinary disease of life, but some workplaces/situations have exceeded the general hazard of the disease

COVID-19 CLAIMS GUIDE: REPORTING

The Workers' Compensation Insurance Organization introduced two new Nature and Cause Injury Codes in March of 2020

- Nature 83 (Covid-19)
- Cause 83 (Pandemic)

Other Codes Frequently Used

- Nature 71 (All Other Occupational Disease Injury, NOC)
- Nature 73 (Contagious Disease)
- Cause 90 (Other Than Physical Cause of Injury)
- Cause 99 (Other - Miscellaneous, NOC)

COVID-19 STATISTICS



KANSAS

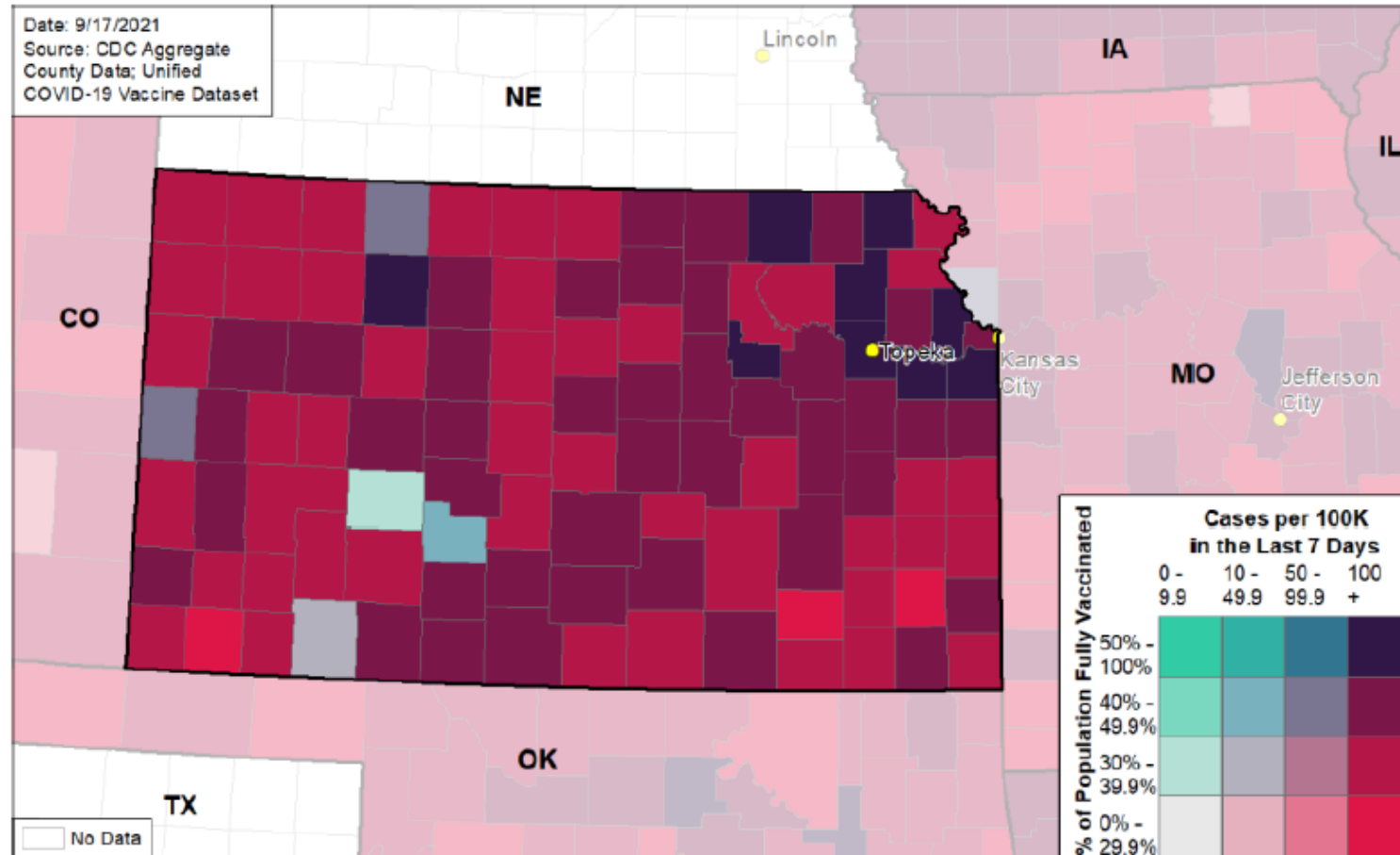
STATE SYNOPSIS

	LAST WEEK	CHANGE FROM PREVIOUS WEEK
RATE OF NEW COVID-19 CASES PER 100,000	298	-12%
NUCLEIC ACID AMPLIFICATION TEST (NAAT) POSITIVITY RATE	10.5%	-0.6%
NEW CONFIRMED COVID-19 HOSPITAL ADMISSIONS / 100 BEDS	8.9	+1%
RATE OF NEW COVID-19 DEATHS PER 100,000	3.7	-4%
COMMUNITY TRANSMISSION LEVEL	HIGH TRANSMISSION	
PEOPLE RECEIVED AT LEAST 1 DOSE	1,716,540 people	58.9% of total pop.
PEOPLE 18+ RECEIVED AT LEAST 1 DOSE	1,600,989 people	72.3% of 18+ pop.
PEOPLE FULLY VACCINATED	1,456,293 people	50.0% of total pop.
PEOPLE 18+ FULLY VACCINATED	1,366,134 people	61.7% of 18+ pop.

SARS-CoV-2 Variants of Concern

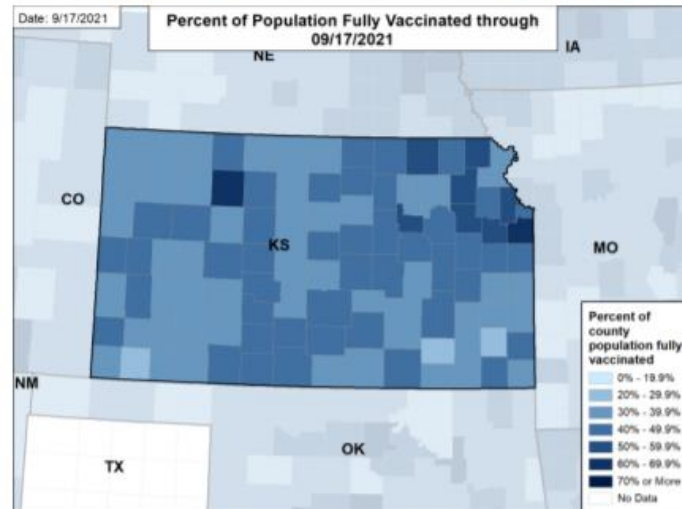
- The following proportions of variants of concern have been identified in [Kansas](#): B.1.617.2, AY.1, AY.2 (Delta, 98.6%)

COVID-19 Reported Cases per 100,000 Population (last 7 days) and Percent of Total Population Fully Vaccinated



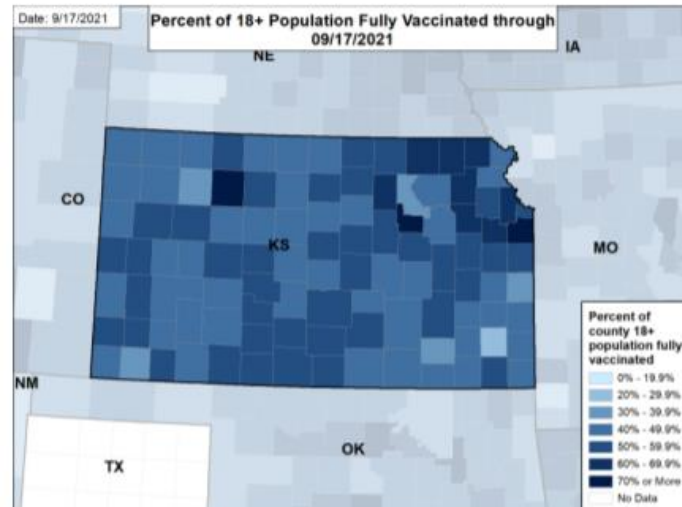
In map visualizations, test positivity data is now suppressed if there are strictly fewer than 20 total tests in the 7-day period.

PERCENT OF POPULATION FULLY VACCINATED

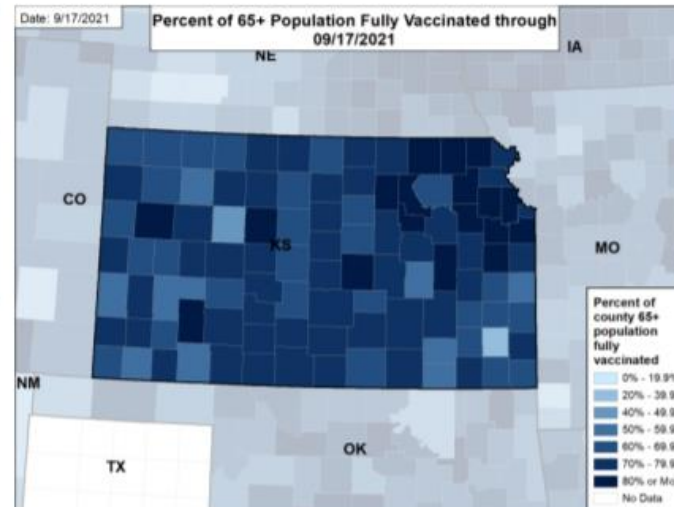


	RECEIVED AT LEAST ONE DOSE	FULLY VACCINATED
ALL PEOPLE	1,716,540 58.9% of total pop.	1,456,293 50.0% of total pop.
PEOPLE 12-17	115,419 48.4% of 12-17 pop.	90,136 37.8% of 12-17 pop.
PEOPLE 18+	1,600,989 72.3% of 18+ pop.	1,366,134 61.7% of 18+ pop.
PEOPLE 65+	460,586 96.9% of 65+ pop.	398,249 83.8% of 65+ pop.

PERCENT OF 18+ POPULATION FULLY VACCINATED



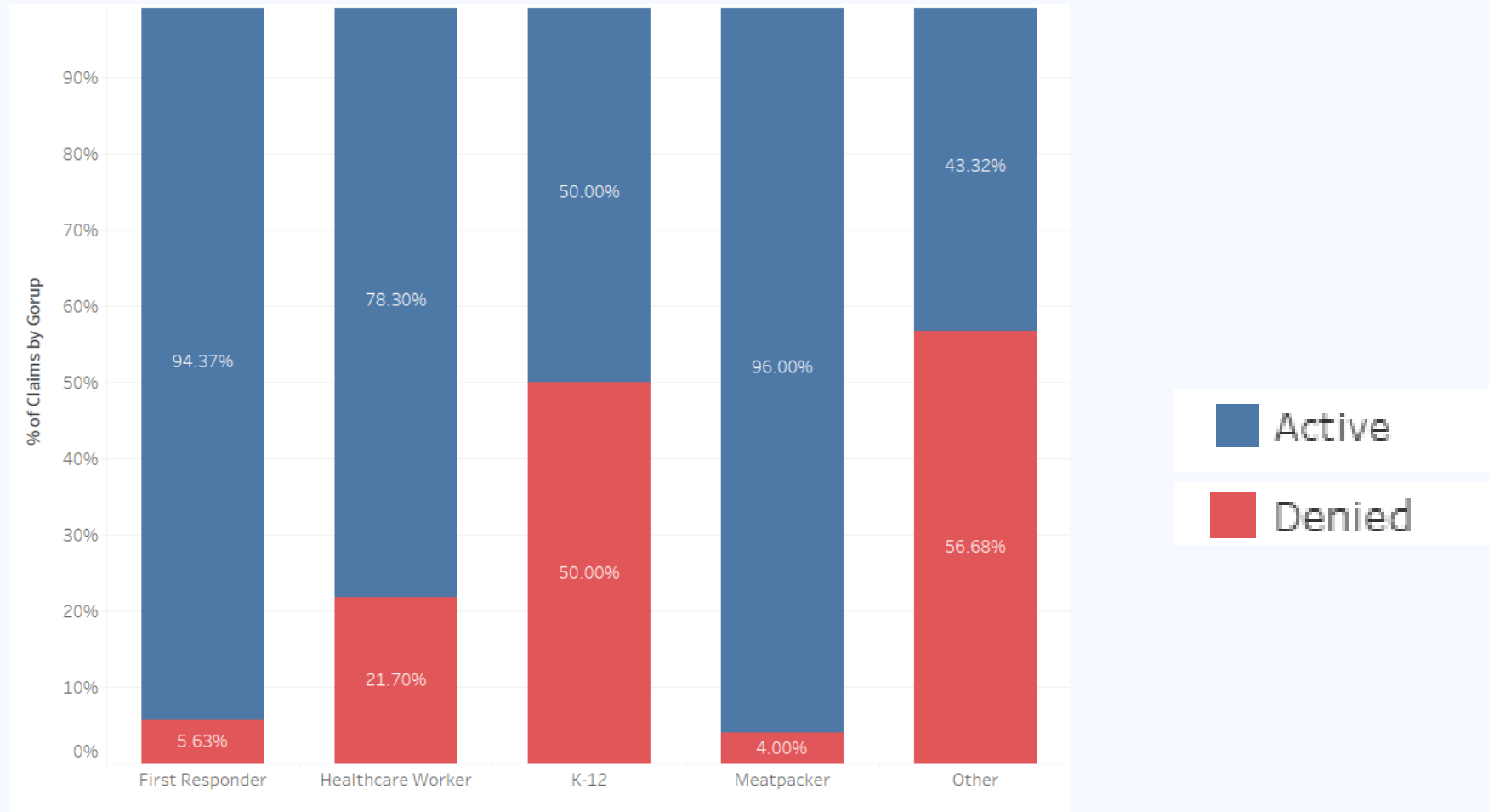
PERCENT OF 65+ POPULATION FULLY VACCINATED



- Covid-19 Claims by Occupation and Status

OccupationType	Active	Denied	Total
First Responder	134	8	142
Healthcare Worker	1,966	545	2,511
K-12	1	1	2
Meatpacker	48	2	50
Other	493	645	1,138
Total	2,642	1,201	3,843

- Percentage of Denied Covid-19 Claims by Occupation



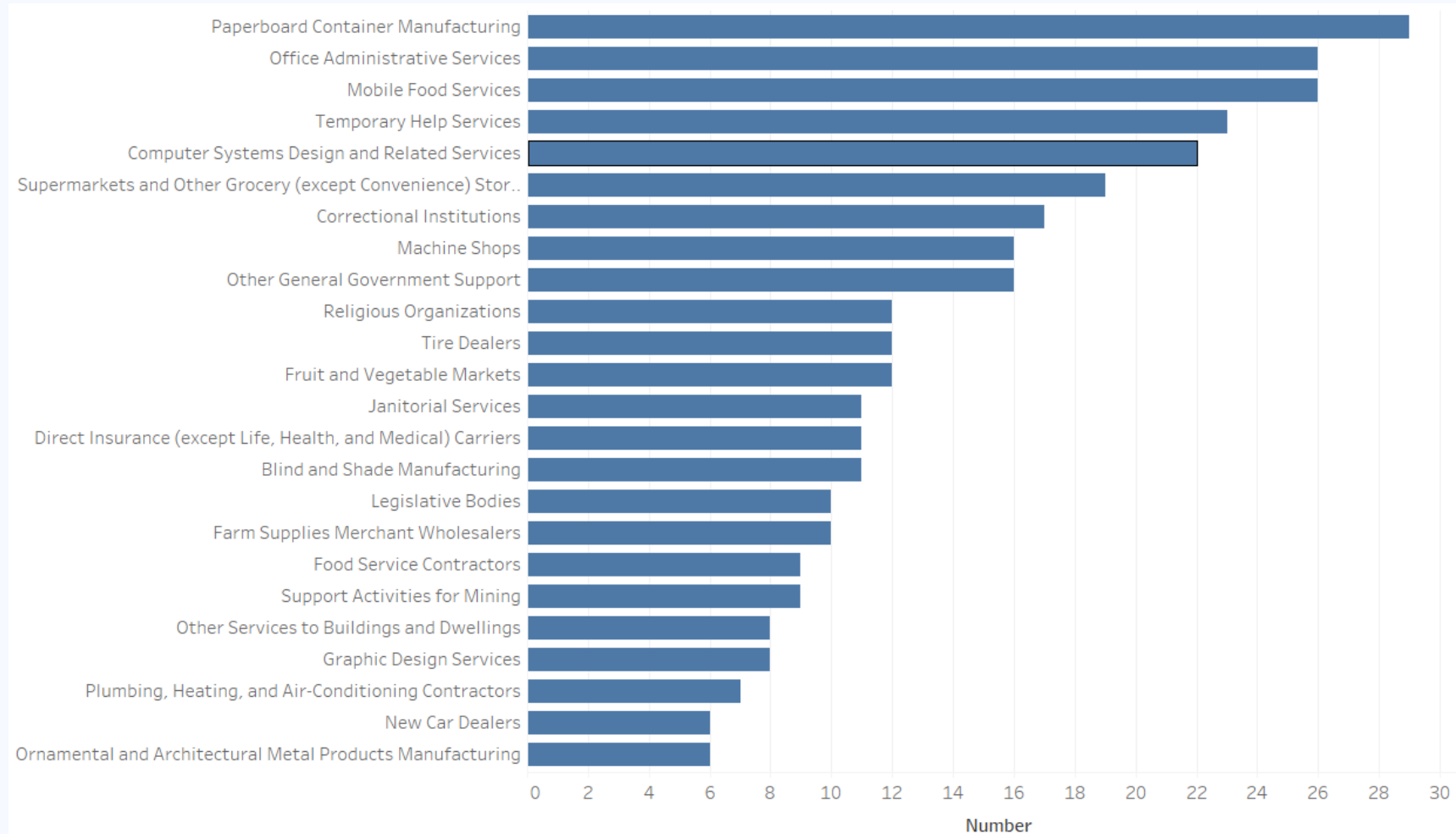
- Covid-19 Claims by Occupation and Claim Type

OccupationType	Indemnity	Medical	Notification	Unspecified
First Responder	16	50	58	18
Healthcare Worker	1,810	363	301	37
K-12	0	2	0	0
Meatpacker	3	6	41	0
Other	178	806	132	22
Total	2,007	1,227	532	77

- Covid-19 Claims with Paid Benefits by Occupation

OccupationType	Claims w/ Benefits	% of Claims w/ Benefits	Reported Indemnity	Other Benefits
First Responder	13	9.15%	\$24,155.21	\$13,557.25
Healthcare Worker	1,137	45.28%	\$1,145,266.25	\$687,391.20
K-12	0	0.00%	\$0.00	\$0.00
Meatpacker	1	2.00%	\$3,201.49	\$1,167.45
Other	37	3.25%	\$34,738.63	\$19,310.72

- Covid-19 Claims from Other Industries



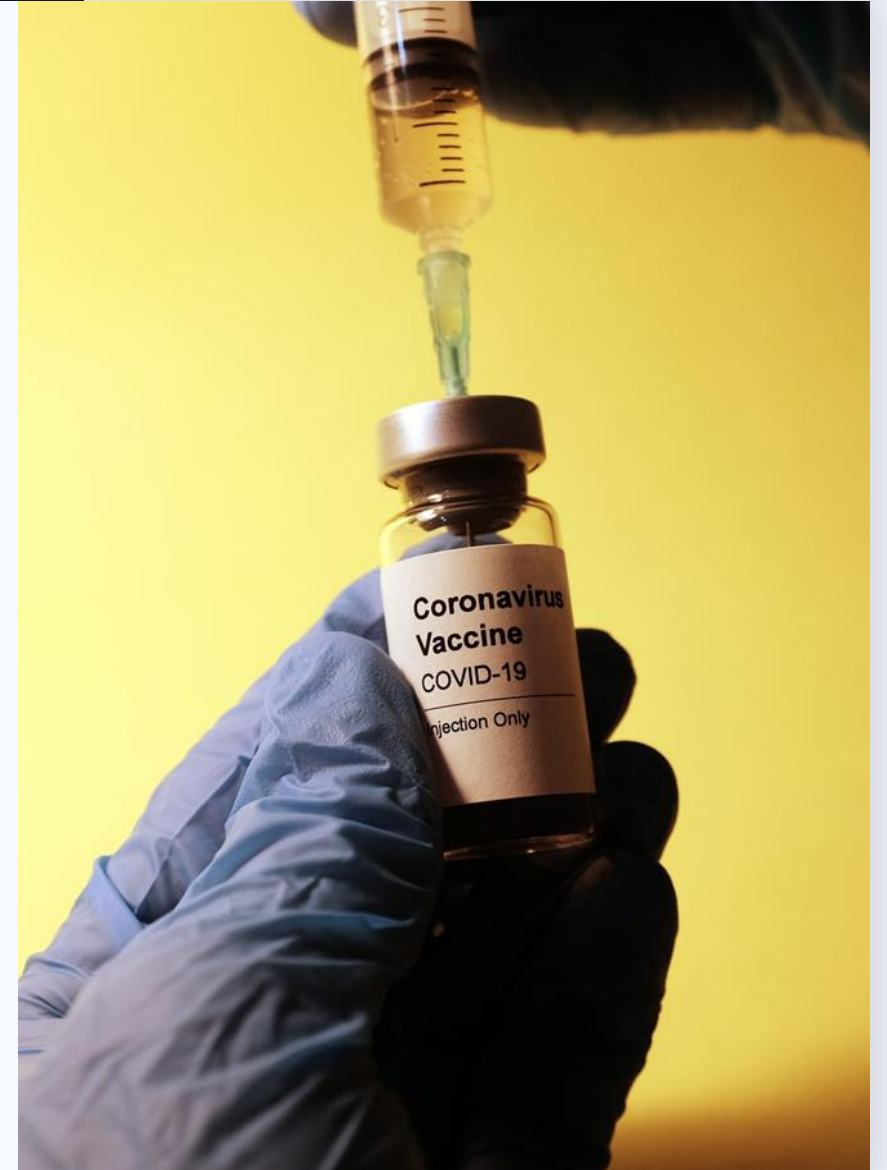
- Covid-19 Claims Fatalities

Occupation Type	Occupation	Date of Injury
Healthcare Worker	Healthcare Worker	9/15/2020
Healthcare Worker	Healthcare Worker	11/30/2020
Healthcare Worker	Healthcare Worker	12/6/2020
Healthcare Worker	Healthcare Worker	6/29/2021
Meatpacker	Meatpacker	4/17/2020
Meatpacker	Meatpacker	4/28/2020
Other	Grain and Field Bean Merchant Wholesalers	5/10/2020
Other	Fast Food Restaurant	7/6/2020
Other	Grain and Field Bean Merchant Wholesalers	8/6/2020
Other	Beef Trimmer	8/15/2020
Other	Customer Service Rep	8/27/2020
Other	Feed, Fertilizer, Hay, Or Grain Dealer	11/28/2020
Other	Trucking	12/7/2020

- Covid-19 Claims and Cases by County

County	Reported Injuries	Confirmed Cases	Claims/Case
Johnson	1,362	73,175	0.019
Sedgwick	595	73,234	0.008
Out of State	390	0	0.000
Wyandotte	207	26,574	0.008
Shawnee	117	23,815	0.005
Douglas	114	11,543	0.010
Finney	113	6,920	0.016
Ford	80	6,739	0.012
Crawford	66	6,499	0.010
Saline	65	7,703	0.008
Riley	55	7,770	0.007
Seward	43	4,327	0.010
Butler	41	9,887	0.004
Leavenwor..	39	9,700	0.004
Reno	37	10,256	0.004
Barton	36	3,303	0.011
Norton	36	1,307	0.028
Coffey	35	1,040	0.034
Nemaha	31	1,791	0.017
Ellis	28	4,246	0.007

VACCINE POLICY OVERVIEW



VACCINE POLICY OVERVIEW: LEGAL PRECEDENT

- Jacobson v Massachusetts (1905) was a United States Supreme Court case in which the Court upheld the authority of states to enforce compulsory vaccination laws. The court wrote that individual right must give way to “common good.”
- *Bridges, et al. v. Houston Methodist Hospital et al.* (2021) was a recent federal decision that upheld the right of a health network to require vaccinations as a condition of employment
- During the H1N1 epidemic, the EEOC said employers could require vaccines so long as they did not violate Title VII

VACCINE POLICY OVERVIEW: LEGAL PRECEDENT (CONT'D)

- Nearly all states currently require certain health care workers to be vaccinated for influenza, Hepatitis B, and MMR.
- Kansas and Kansas City health networks have begun to announce deadlines for vaccination requirements
 - The University of Kansas Health System
 - Truman Medical Centers/University Health
 - Ascension Via Christi (AVC)
 - Lawrence Memorial Hospital

VACCINE POLICY OVERVIEW: OPPOSITION

Nine states have recently enacted laws that prohibit vaccine mandates

- Emergency authorization
- Public entities
- Vaccine passport
- Re-enforcing Title VII

Kansas SB 213 (not passed last session) would fine employers for taking adverse action against employees refusing to get vaccinated

VACCINE POLICY OVERVIEW: CLAIM FRAMEWORK

- Reality is that many employers are starting to require vaccinations
- mRNA vaccines have caused indemnity claims as people need time off to recover
- Compensability factors
 - was mandated by the employer
 - was administered at a work site
 - was highly encouraged through a workplace

VACCINE CLAIM STATISTICS



Vaccine Claims by Month and Status

	Active	Denied	Grand Total
January 2021	4	0	4
February 2021	7	1	8
March 2021	6	1	7
April 2021	2	2	4
May 2021	1	0	1
June 2021	0	1	1
July 2021	1	0	1
August 2021	2	0	2
September 2021	2	0	2
Grand Total	25	5	30

Vaccine Claims Outside of Healthcare

Injury Type	Status	Occupation	Date of Injury
Traumatic Injury	Denied	Pharmacy Tech	1/29/2021
Traumatic Injury	Active	Food Service Worker	2/11/2021
Traumatic Injury	Denied	Maintenance	3/16/2021
Occupational Disease	Denied	Senior Account	4/2/2021
Traumatic Injury	Active	Paralegal	7/14/2021

Vaccine Claims with Paid Benefits

Injury Type	Indemnity Paid	Occupation	Date of Injury
Occupational Disease	\$ 294.43	Registered Nurse	12/27/2020
Traumatic Injury	\$ 490.71	Registered Nurse	12/31/2020
Traumatic Injury	\$ 883.29	Direct Patient Care	3/14/2021

VARIANT INFORMATION

- Variant Timeline



Questions?

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